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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/609,076	06/27/2003	Frank Yang	PAT-1434CIP	7455
7590 12/13/2005			EXAMINER	
Raymond Sun 12420 Woodhall Way Tustin, CA 92782			ELOSHWAY, NIKI MARINA	
			ART UNIT	PAPER NUMBER
			3727	
DATE MAILED: 12/13/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/609,076

Applicant(s)

YANG ET AL.

Examiner

Niki M. Eloshway

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 8/8/05, 9/20/05.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 12-42 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 12-42 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>9/20/05</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submissions filed on August 8, 2005 and September 20, 2005 have been entered.

Response to Amendment

2. The status identifiers for claims 12-31, are incorrect. These claims are not "Original" claims to the application. These claims should be identified as "Previously Presented". Please make the appropriate corrections in any submissions filed in response to this Office Action.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

4. Claims 18 and 30 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The first and second lid portions being aligned in the same plane as the first and third side wall, respectively, was not in the application as originally filed. The drawings and original specification do not support that the first and

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second lid portions are aligned in the same plane as the first and third side wall, respectively. In fact, Figure 4 shows that the first and second lid portions are spaced outwardly from the planes of the first and third side wall.

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claims 12-19 and 24-31 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Independent claims 12 and 24 set forth that first and second lid portions are “hingedly coupled to the top edge” of the first and third side walls, respectively. However, dependent claims 13 and 25, and the drawings teach that the first and second lid portions are hingedly coupled to the frame, not the side walls. Are the lid portions hingedly coupled to the side wall or to the frame?

The dependent claims not specifically mentioned are rejected as being dependent upon a rejected base claim since they inherently contain the same deficiencies therein.

Claim Rejections - 35 USC § 102

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

8. Claims 33-36 and 38-42 are rejected under 35 U.S.C. 102(e) as being anticipated by Pfiefer et al. (U.S. 6,626,317). Pfiefer et al. teaches a storage container 1 with a reservoir 2, lid assembly 10-11, foot pedal 15, linkage assembly shown in figure 4 and dampening mechanism taught in col. 3 lines 1-9.

Claim Rejections - 35 USC § 103

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claims 12, 13, 17, 24, 25 and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Barnstead (U.S. 1,503,015) in view of Witthoeft (U.S. 5,111,958). Barnstead discloses the claimed invention except for the four sidewalls of the shell. Barnstead teaches a shell having a round cross section. Witthoeft teaches that it is known to have a shell with four side walls (see shell 12). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the trash can assembly of Barnstead with the shell having a square cross section, as taught by Witthoeft, in order to enlarge the cavity of the shell.

11. Claims 14-16 and 26-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Barnstead (U.S. 1,503,015) in view of Witthoeft (U.S. 5,111,958), as applied to claims 13 and 25 above, and further in view of Wang (U.S. 6,010,024). The modified assembly of Barnstead discloses the claimed invention except for the frame being made of plastic. Wang teaches that it is known to provide an assembly wherein the frame is made of plastic (see elements 51 and 53 in figure 2). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the modified assembly of Barnstead with the frame being made of plastic, as taught by Wang, in order to give the frame the flexibility, and reduced weight, characteristic of plastics.

12. Claims 12, 18, 24, 30 and 37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pfiefer et al. (U.S. 6,626,317) in view of Witthoeft (U.S. 5,111,958). Pfiefer et al. discloses the claimed invention except for the four sidewalls of the shell. Witthoeft teaches that it is known to have a shell with four side walls (see shell 12). It would have been obvious to one having ordinary skill in the art at the

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time the invention was made to provide the trash can assembly of Pfiefer et al. with the shell having a square cross section, as taught by Witthoeft, in order to enlarge the cavity of the shell, and give it a more conventional shape.

13. Claims 19 and 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Barnstead (U.S. 1,503,015) in view of Witthoeft (U.S. 5,111,958), as applied to claims 13 and 25 above, and further in view of Hammond (U.S. 4,558,799). The modified assembly of Barnstead discloses the claimed invention except for the slot and sleeve hinge arrangement. Hammond teaches that it is known to provide an assembly wherein the hinge has a slot and sleeve arrangement (see figure 5). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the modified assembly of Barnstead with the hinge arrangement of Hammond, in order to provide a secure yet removable connection between the frame and the lid portions.

14. Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over Barnstead (U.S. 1,503,015) in view of Hammond (U.S. 4,558,799). The assembly of Barnstead discloses the claimed invention except for the slot and sleeve hinge arrangement. Hammond teaches that it is known to provide an assembly wherein the hinge has a slot and sleeve arrangement (see figure 5). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the assembly of Barnstead with the hinge arrangement of Hammond, in order to provide a secure yet removable connection between the frame and the lid portions.

15. Claims 21-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Barnstead (U.S. 1,503,015) in view of Hammond (U.S. 4,558,799), as applied to claim 20 above, and further in view of Wang (U.S. 6,010,024). The modified assembly of Barnstead discloses the claimed invention except for the frame being made of plastic. Wang teaches that it is known to provide an assembly wherein the frame is made of plastic (see elements 51 and 53 in figure 2). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the modified assembly of Barnstead

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with the frame being made of plastic, as taught by Wang, in order to give the frame the flexibility, and reduced weight, characteristic of plastics.

16. Claims 32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pfiefer et al. (U.S. 6,626,317) in view of George (U.S. 6,386,386). Pfiefer et al. discloses the claimed invention except for the toe-kick recess. George teaches that it is known to provide a trash can assembly with a toe-kick recess (see lead line 28 in figures 1 and 2). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the assembly of Pfiefer et al. with a toe-kick recess, as taught by George, in order to prevent damage to the pedal bar by providing it in a recess.

Conclusion

17. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The prior art is cited for the hinged lids.

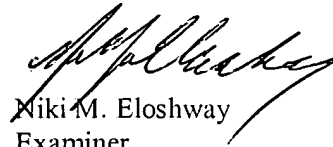
18. THIS ACTION IS NON-FINAL.

19. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Niki M. Eloshway whose telephone number is 571-272-4538. The examiner can normally be reached on Thursdays and Fridays 8 a.m. to 4 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan Newhouse can be reached on 571-272-4544. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Niki M. Eloshway
Examiner
Art Unit 3727

nme